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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 13, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref. No.: GLS-5613

HAWAII

Amend Grant of Easement No. S-5613; Consent to Assign Portion of Grant of Easement No. S-5613, Keauhou 1st, North Kona, Hawaii, Tax Map Key: 3rd/ 7-8-12: seaward of 40, 41, 51 & 75

APPLICANT:

George J. Handgis and Sharon J. Handgis, Trustees of the Handgis Living Trust, as Assignor, to Michael Delesalle, husband of Dale Delesalle, Tenant in Severalty, whose mailing address is P. O. Box 390659, Keauhou, HI 96739, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands off Heeia Bay, situated at Keauhou 1st, North Kona, Hawaii, identified by Tax Map Key: 3rd/ 7-8-12; seaward of 41, and labeled as Easement F, as shown on the attached map labeled Exhibit A.

AREA:

.0161 acres (700 square feet), more or less.

Easement A	14 sq. ft.		Easement D	490 sq. ft.
Easement B	32 sq. ft.		Easement E	2,229 sq. ft.
Easement C	376 sq. ft.		Easement F	700 sq. ft.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Right, privilege, and authority to stain, maintain, and repair the gunnited surfaces seaward of the seawall.

TERM OF LEASE:

55-years, commencing on February 5, 2002 and expiring on February 4, 2057. First rental reopening is scheduled for February 3, 2012.

ANNUAL RENTAL:

\$36.45

As calculated in the following manner:

[$\$200 \text{ Total Annual Rent} / 3,841 \text{ Total easement area (s.f.)} = \$0.0521 \text{ Dollar per square foot}$]

[$\$0.0521 \text{ Dollar per square foot} \times 700 \text{ Easement Area F (s.f.)} = \$36.45 \text{ Annual Rent for Easement Area F}$]

CONSIDERATION:

\$10.00

RECOMMENDED PREMIUM:

Not applicable as this is an easement and not subject to a premium.

DCCA VERIFICATION:

Not applicable, Assignor/Assignee are individuals and, as such, are not required to register with DCCA.

REMARKS:

Grant of Easement No. S-5613, consists of a seawall containing an area of 3,841 square feet along the shoreline, abutting private properties identified as Tax Map Keys: 3rd/ 7-8-12: 40, 41, 51 and 75, at Keauhou and Heeia Bay of Keauhou 1st, North Kona, Hawaii. The survey map exhibited under the Grant (**Exhibit B**), illustrates that the subject seawall is segmented into six contiguous easement areas labeled as Easement Areas A through F. That each easement area is located seaward and corresponds only to a particular privately owned parcel as shown below:

EASEMENT AREA No.	AREA (Square feet)	TAX MAP KEY (To Inure & Seaward of)	LANDOWNER (of Record)
A & B	14/ 32	3 rd / 7-8-12: 75	Handgis Trust
C	376	3 rd / 7-8-12: 51	Handgis Trust
D & E	490/ 2,229	3 rd / 7-8-12: 40	Handgis Trust
F	700	3 rd / 7-8-12: 41	Delesalle

On June 1988, high surf from a storm severely damaged the subject seawalls. On July 1988, Blue Chip Corporation (BCC), the private landowner of the abutting properties, through its managing agent, gunnited the outside (seaward) edge of the seawall to stabilize the damage to the seawall. In doing so, some gunnite covered the rock outcrops below the seawall base and below the high tide water level. BCC was then notified of a Special Management Area violation from the County of Hawaii, and of violations from the Department of Land and Natural Resources for application of the gunnite without a permit and of suspect encroachments onto State-owned fast and submerged lands.

At its meeting of March 25, 2000, Item D-9, the Board of Land and Natural Resources approved a Conservation District Use Application (OA-2949) for: 1) After-the-fact Application of "Gunnite" (Concrete slurry) to State-owned Submerged Lands, and 2) Implementation of Measures (i.e.: staining) to Mitigate the Impact of the Gunnite along the shoreline.

At its meeting of July 14, 2000, Item D-11, the Board of Land and Natural Resources, approved a 55-year term, non-exclusive easement (Grant No. S-5613), and authorized issuance of a construction right of entry to BCC for seawall maintenance purposes. Subject easement was recorded in the Bureau of Conveyances on March 20, 2002 as Document No. 2002-048517.

At its meeting of June 13, 2003, the Board of Land and Natural Resources approved Consent to Assignment of Grant of Easement No. S-5613, BCC, Lessee, to George J. Handgis and Sharon J. Handgis, Trustees of the Handgis Living Trust, dated June 11, 1986, as Assignees.

By letter dated October 19, 2005, Darl C. Gleed, Attorney representing the Handgis Trust, requested Board consent to assign Grant of Easement No. S-5613, George J. Handgis and Sharon J. Handgis, Trustees of the Handgis Living Trust, Assignor, to Michael Delesalle, Assignee. Mr. Delesalle recently purchased Parcel 41 of Tax Map Key: 3rd/ 7-8-12, therefore, it is now also requesting that Grant of Easement No. S-5613 be assigned to enable Mr. Delesalle to properly and effectively maintain the easement/seawall seaward of his property.

In reviewing the request, it appears that the request is really for an assignment of a portion of the original Grant of Easement No. S-5613 and not in its entirety. At time the original grant of easement was issued, staff did not anticipate that the property was comprised of multiple lots and could be eventually sold separately.

Staff is recommending that the Board authorize the bifurcation of the original easement by amending the original Grant of Easement No. S-5613 and that the appropriate documentation of the bifurcation be referred to the Department of the Attorney General. The chart below indicates the various TMKs and the correlating easement and square footages based on the original map and descriptions.

Tax Map Key (To Inure & Seaward of)	Easement Area No.	Area (Square feet)
3 rd / 7-8-12: 75	A & B	14/ 32
3 rd / 7-8-12: 51	C	376
3 rd / 7-8-12: 40	D & E	490/ 2,229
3 rd / 7-8-12: 41	F	700

Further, the most current seawall easement document form includes a standard condition that allows the easement to inure to the benefit of the abutting property. That the grantee need only inform his successor of our liability insurance requirement when the easement is sold. The provision saves the Board, staff, Attorney General's Office, and Grantee a lot of time, effort, and money normally required to process such a request. The subject easement document does not contain the aforementioned condition. Therefore, staff is requesting the subject easement, Grant of Easement No. S-5613 and any amendment made in connection with the bifurcation of the easement include this added condition.

Staff reviewed the file and can report that for the past two (2) years, George and Sharon Handgis had no notices of default. No fire insurance is required. General Liability insurance expires on September 1, 2006. George and Sharon Handgis have not been cited for any other illegal or unlawful activity on the State property since time of issuance of the subject term easement. In addition, lessee has a cash performance bond in the amount of \$400.00 currently in place.

Mr. Michael Delesalle has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There is no outstanding rental reopening issues pending.

Mr. Delesalle's ownership of Tax Map Key: 3rd/ 7-8-12:41 was confirmed through the County Real Property Tax Office and by a copy of an executed Warranty Deed, dated May 27, 2005.

April 13, 2006

RECOMMENDATION: That the Board:

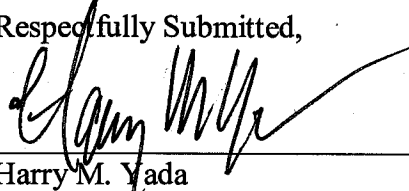
- A. Authorize the bifurcation of Grant of Easement No. S-5613 and the assignment of the portion of the easement fronting TMK: 3rd/ 7-8-12: 41 to Mr. Michael Delesalle or the owner of record, subject to the following terms and conditions:

1. Inserting a condition, which states:

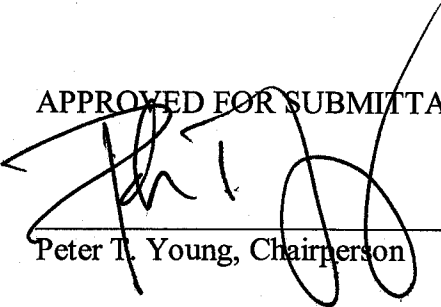
"The easement shall run with the land and shall inure to the benefit of the real properties described as Tax Map Key: 3rd/ 7-8-12: 40, 41, 51 and 75, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document."

2. The appropriate documentation of the bifurcation of the original Grant of Easement No. S-5613 and assignment of the appropriate portion to Mr. Michael Delesalle shall be referred to the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Harry M. Yada
District Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

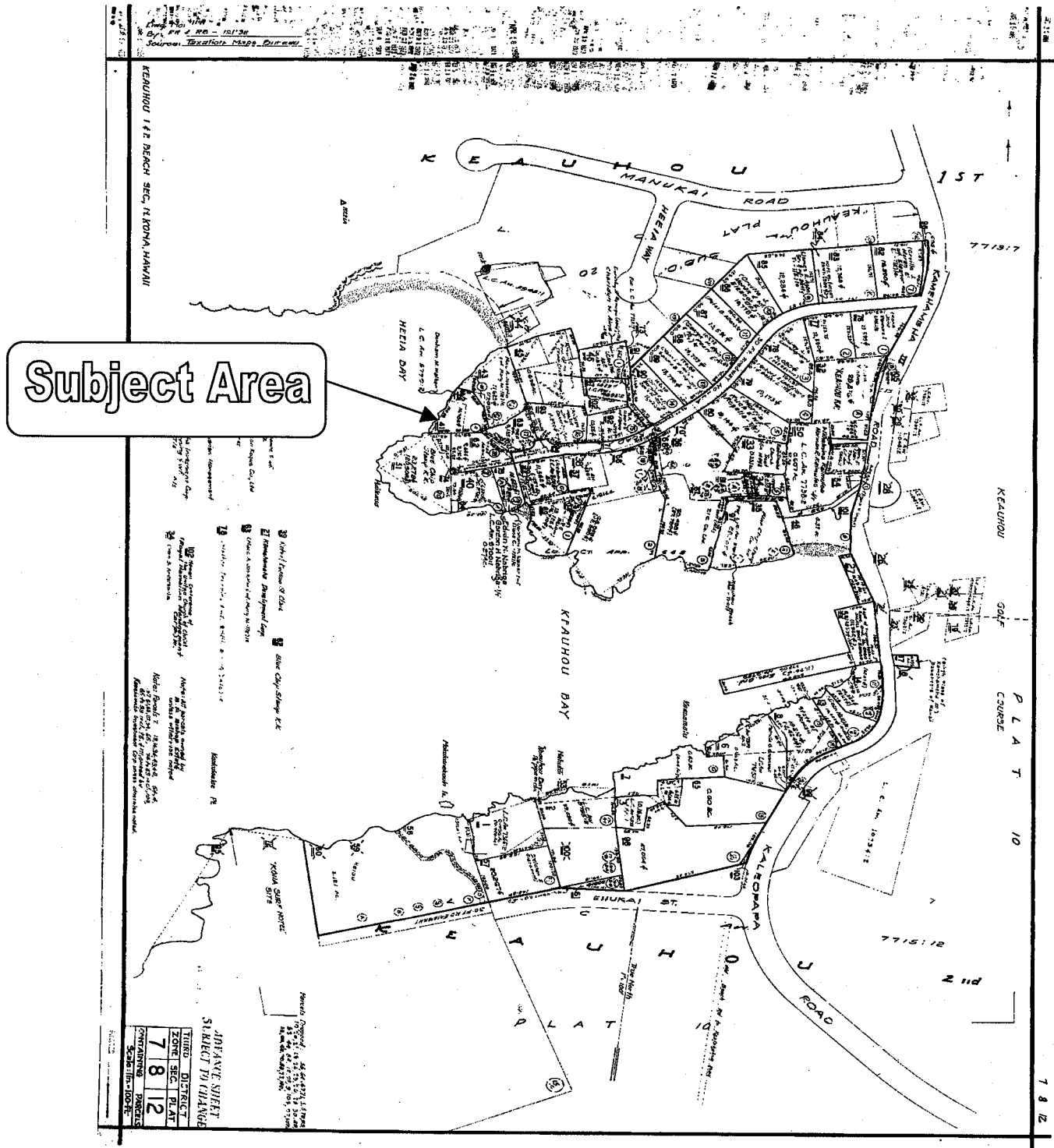


EXHIBIT A

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